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UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION  
 ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:  
 Sheldon J. Wolfe, Chairman  
 Emmeth A. Luebke  
 Jerry Harbour

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In the Matter of	Docket Nos. 50-443-OL-1 50-444-OL-1
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, <u>et al.</u>	(On-Site Emergency Planning and Safety Issues)
(Seabrook Station, Units 1 and 2)	(ASLBP No. 88-558-01-OLR) March 18, 1988

MEMORANDUM AND ORDER  
 (Denying NECP Motion For Reconsideration; Denying NECP's Request  
 For Entry Upon Land; Granting NECP Motion For Leave To File A  
 Reply; Directing §2.749 Filings)

MEMORANDUM

## I. NECP Motion For Reconsideration

## A. Background

In a Memorandum and Order (M&O) dated February 17, 1988, the Board denied NECP's motion to compel Applicants to respond to NECP's second set of interrogatories which had been filed on January 25, 1988. On March 1, 1988, NECP filed a motion for reconsideration. On March 11, 1988, the Staff filed an opposing response. The Applicants filed an opposing response on March 14, 1988.

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#### B. Discussion

In our M&O of February 17, 1988 (unpublished), we stated that it was clear to us from a reading of NECP Contention IV that it is limited to asserting concerns that Applicants must establish a surveillance and maintenance program for the prevention of the accumulation of mollusks, other aquatic organisms, and debris in Seabrook's cooling systems in order to satisfy certain General Design Criteria, and that indeed, by its repeated statements in ALAB-875, 26 NRC 251 (1987), the Appeal Board had recognized this limited thrust of the contention. Further, after noting that the term "biofouling" was not contained in the contention, we rejected NECP's three arguments which implied that its intent in drafting the contention was to encompass microbiologically induced corrosion (MIC) because, in support of these arguments, NECP relied upon an NRC-sponsored study, NUREG/CR-4724(1986) which had been issued some four years after Contention IV was proposed.

In the instant motion, NECP relies upon the affidavit of Dr. James Bryers, Professor in the Center for Biochemical Engineering at Duke University and upon attached scientific papers, reports or articles in order to demonstrate that, in 1982, MIC was recognized as one of the detrimental effects of the biofouling of nuclear power plants (Motion at 1). In Dr. Bryers' opinion, while Contention IV does not specifically identify any particular type or detrimental effect of fouling, the identification of the issue in the contention broadly identifies the process that causes "fouling" and "corrosion" and thus MIC is within the scope of the contention (Bryers' affid. at ¶¶ 3, 4, 5).

As the Board made known during the telephone conference held on February 23, 1988, we have been concerned about the "paper blizzard" rampant in this onsite portion of the case which has caused unwarranted delays in this proceeding (Tr. 1146-47, 1155). NECP's motion for reconsideration is such an example of the continuing "paper blizzard" which we will no longer tolerate. The instant motion has no merit whatsoever. NECP now urges that, since MIC was recognized in 1982 as one of the detrimental effects of the biofouling of nuclear power plants, its intent in the drafting of the contention in 1982 was to have it encompassed within the scope of the contention. Obviously, the opinion of Dr. Bryer and the appended scientific studies cannot serve to establish that, in preparing the contention in 1982, the drafter intended to encompass MIC within the scope of the contention.<sup>1</sup>

## II. NECP Request For Entry Upon Land

### A. Background

On February 19, 1988, NECP filed a request for entry upon land for inspection and the taking of notes, samples and photographs at the

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<sup>1</sup> In passing we note that NECP resurrects the argument that interrogatories directed to the circulating water systems are within the scope of the contention, but does not explain wherein we erred in concluding that our resolution of the MIC issue was dispositive (See M&O of February 17, 1988, at page 3, n. 2). Further, it resurrects its objection to the Applicants' definition of biofouling as being incorrect as contrasted to its own definition -- the short of the matter is that the term "biofouling" is not contained in the contention and thus any definition would be irrelevant.

Seabrook plant in the areas containing piping and heat-exchangers that are susceptible to biofouling or microbiologically induced corrosion and containing laboratories where testing for biofouling or microbiologically induced corrosion is performed. On February 26, Applicants filed a response objecting to this request. On March 3, NECP filed a motion for leave to reply to Applicant's opposing response, which was accompanied by NECP's reply brief -- we grant this motion and have read the reply.

#### B. Discussion

Initially, in an Order of October 16, 1987, we had directed that discovery should commence on October 26 upon remanded NECP Contentions I.V. and IV<sup>2</sup> and be completed by December 28. Thereafter, in an Order of December 2, 1987, the Board extended the original discovery schedule in directing that Applicants, NECP and Staff should proceed with discovery upon the two remanded issues and complete discovery by February 19, 1988.

Citing three prior scheduling Orders<sup>3</sup> (unpublished), NECP stated that each had specified a specific date by which discovery requests had to be served. It argued that, since the Order of December 2, 1987 did

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<sup>2</sup> NECP IV, which is the subject of NECP's instant request for entry upon land, addresses the accumulation of aquatic organisms and other foreign matter in cooling systems.

<sup>3</sup> Two of these scheduling Memoranda and Orders dated September 13, 1982 and December 4, 1986 had been issued by the "Hoyt" Board and the third had been issued on July 25, 1986 by the "Wolfe" Board.

not specify a deadline by which discovery requests had to be served and in light of the three prior Orders, the December 2 Order could only be read to require that all requests for discovery had to be served on or before February 19, 1988. NECPN's argument is flawed in that the Order of December 2, 1987 was very specific and clear in directing that the parties must complete discovery by February 19, 1988, and, in light of that specific deadline for completion, NECPN cannot be heard to allege that it had relied reasonably upon past practices of the Board.

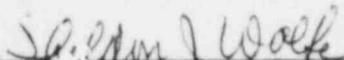
Further, not only do we deny the request for entry upon land because it had been untimely filed, we also deny the request because, in our Order of February 17, 1988 (which we affirm in Part I, supra) we noted that the term "biofouling" was not contained in the contention and concluded that microbiologically induced corrosion (MIC) was not within the scope of NECPN Contention IV. Accordingly, it follows that the request for entry upon land must be denied since 10 C.F.R. §2.740(b)(1) limits the scope of discovery to matters which are relevant to the subject matter involved in the proceeding.

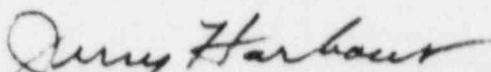
ORDER

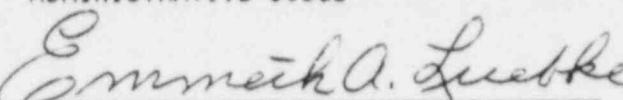
1. NECPN's Motion For Reconsideration dated March 1, 1988 is denied.
2. NECPN's Request For Entry Upon Land dated February 19, 1988 is denied.
3. NECPN's Motion of March 3, 1988 For Leave To File A Reply To Applicants' Response To NECPN's Request For Entry Upon Land is granted.

4. Finally, in order to assure that the process moves along at an expeditious pace, consistent with the demands of fairness, the Applicants, NECPN and the Staff, if they desire to move for summary disposition with respect to NECPN Contentions IV and I.V., shall file motions for summary disposition on or before April 29, 1988. Any answers supporting or opposing a motion for summary disposition shall be filed pursuant to 10 C.F.R. §2.749.

THE ATOMIC SAFETY AND LICENSING BOARD

  
Sheldon J. Wolfe, Chairman  
ADMINISTRATIVE JUDGE

  
Jerry Harbour  
ADMINISTRATIVE JUDGE

  
Emmeth A. Luebke  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 18th day of March, 1988.